



International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Concluding observations on the initial report of Uruguay*

1. The Committee considered the initial report of Uruguay (CMW/C/URY/1) at its 243rd and 244th meetings (see CMW/C/SR.243 and 244), held on 31 March and 1 April 2014, and adopted the following concluding observations at its 260th meeting, held on 11 April 2014.

A. Introduction

2. The Committee welcomes the submission, albeit late, of the initial report of the State party and is grateful for the detailed replies provided to the list of issues (CMW/C/URY/Q/1/Add.1). The Committee commends the State party for its high-level delegation, headed by Mr. Ricardo González, Director-General for Political Affairs in the Ministry of Foreign Affairs, and comprising the Permanent Representative of Uruguay to the United Nations Office at Geneva and representatives of various ministries and the Permanent Mission. The Committee welcomes the additional information supplied by the delegation in a constructive dialogue, which has given the Committee a clearer understanding of how the Convention is applied in the State party.

3. The Committee recognizes that Uruguay, traditionally a country of origin for migrant workers, has in recent years also registered an increase in the flow of migrant workers in transit or staying in its territory, as well as in the return of its nationals, thereby becoming a receiving country.

4. The Committee observes that some of the countries in which Uruguayan migrant workers are employed are not yet parties to the Convention, which could constitute an obstacle to those workers' enjoyment of their rights under the Convention. It also notes that some of the countries in which Uruguayans have settled belong to the Southern Common Market (MERCOSUR) and that they therefore may have access to benefits under MERCOSUR agreements.

* Adopted by the Committee at its 20th session (31 March–11 April 2014).



B. Positive aspects

5. The Committee welcomes the various measures adopted by the State party to bring its legislation, policy, procedures and practice into line with its international obligations and, in particular, with the principles set out in the Convention. It welcomes the Migration Act, Act No. 18250 (2008), which adheres to the provisions of the Convention and could serve as a model for other States parties to follow. The Committee notes with particular interest that the Act recognizes:

(a) The right to migrate as a human right;

(b) The enjoyment of social rights by migrant workers on an equal basis with Uruguayan nationals and the prohibition of any restriction in access to justice, health or education on account of migration status;

(c) That no case involving a migrant in an irregular situation for administrative reasons warrants detention;

(d) The strengthening of advisory boards and their role in establishing a link between Uruguayan migrant workers abroad and the State party.

6. The Committee also applauds the adoption of the following laws:

(a) Act No. 18446 (2008) and Act No. 18806 (2011) to create and modify the National Human Rights Institution and Ombudsman's Office, whose five members were appointed in May 2012 and assumed their duties in June 2012;

(b) Act No. 18836 (2011) approving accession to the Convention, which abolished the requirement of legalization for foreign public documents;

(c) Act No. 18076 on the right of refugees to asylum (2006), which established the Refugee Commission, and Act No. 18382 approving the framework Agreement with the Office of the United Nations High Commissioner for Refugees (UNHCR), on the Resettlement of Refugees (2008);

(d) Act No. 18065 on domestic labour (2006).

7. The Committee welcomes the bilateral and multilateral agreements signed by the State party in relation to migrant workers, particularly:

(a) The MERCOSUR and Associate Members Residence Agreements;

(b) The social security agreements with several of the main countries of employment and residence of Uruguayan migrant workers within Latin America and MERCOSUR, in the case of MERCOSUR recognizing the portability of social benefits.

8. The Committee commends the State party's ratification of International Labour Organization (ILO) Conventions No. 102 concerning Minimum Standards of Social Security (2009) and No. 189 concerning decent work for domestic workers (2011). The Committee welcomes the fact that the State party was the first country in the world to ratify Convention No. 189.

9. The Committee applauds the State party for making the declaration under article 77 of the Convention, recognizing the Committee's competence to receive and consider individual communications.

10. The Committee is pleased to note the low levels of corruption in the State party.

C. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

11. The Committee regrets the lack of information on the application of the Convention by domestic courts.

12. The Committee invites the State party to provide information on the application of the Convention by domestic courts in its next periodic report.

Data collection

13. The Committee notes the efforts made to improve the collection of data on migratory flows, and in particular the addition of specific questions in the 2011 population census and the gathering and analysis of data on migration by various public bodies. It is nevertheless concerned that the level of cooperation and information exchange between those bodies and the National Institute of Statistics (INE), which plays the main part in preparing statistics, is inadequate. The Committee notes that all migrant workers and members of their families in the State party have the right to access public service programmes, but notes that statistics permitting the evaluation of such programmes are lacking.

14. The Committee recommends that the State party step up its efforts to improve inter-agency coordination between the various bodies involved in preparing and publishing statistics on migration. It also encourages the State party to clarify and reinforce the mandate of INE to consolidate information and prepare and publish disaggregated statistics covering all aspects of the Convention. The Committee also recommends that the information obtained should form the basis for the design of effective public policies and programmes to protect the rights of migrant workers and members of their families.

Training in and dissemination of the Convention

15. The Committee welcomes the State party's action on training and awareness-raising for officials and the general public regarding the Convention and its provisions. The Committee is concerned that migrant workers do not always have enough information on their rights or on how to obtain help, including legal assistance.

16. The Committee recommends that the State party:

(a) Continue to develop its training and awareness-raising programmes on the Convention and its provisions for all officials working for bodies responsible for ensuring observance of all rights under the Convention, and for society at large;

(b) Step up its information campaigns and programmes for migrant workers and members of their families on their rights under the Convention; and

(c) Continue cooperating with civil society organizations that work directly to publicize the Convention and support migrant workers, in order to improve coordination and complementarity of services and efforts.

17. The Committee welcomes the establishment of the National Human Rights Institution and Ombudsman's Office, and notes with interest its areas of competence and its work in respect of migrant workers' rights in the State party. The Committee takes note of the information shared by the delegation, to the effect that accreditation by the International

Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights is scheduled for the October 2014 meeting.

18. The Committee encourages accreditation of the National Human Rights Institution by the International Coordinating Committee.

2. General principles (arts. 7 and 83)

Non-discrimination

19. The Committee welcomes with satisfaction the various efforts made by the State party to combat discrimination and promote the full enjoyment of human rights by migrant workers. It is, however, concerned at the absence of any specific legislation prohibiting discrimination. It is also concerned at the fact that migrant workers and members of their families in the State party are subject to discrimination of various kinds, including employment discrimination and social stigmatization; and at reports of a lack of complaint mechanisms.

20. The Committee encourages the State party to:

(a) Enact specific legislation prohibiting discrimination and create or strengthen complaints mechanisms in State institutions;

(b) Step up its efforts to ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy the rights provided for in the Convention without discrimination, in accordance with article 7;

(c) Continue to work with the media, international bodies and civil society organizations, to raise awareness among the general public of efforts to combat discrimination against migrants, and social stigmatization.

Right to an effective remedy

21. The Committee is concerned that migrant workers have limited access to justice in practice because they are unaware of how to access the redress mechanisms to which they are entitled. The Committee notes the lack of information on follow-up to complaints of violations of migrant workers' rights, relating mainly to the agricultural sector in border areas with Brazil. It also notes the lack of information on requests for legal aid and its provision by legal advice centres or public defenders' offices in Montevideo, or by telephone.

22. The Committee recommends that the State party ensure that, in legislation and in practice, migrant workers and members of their families have the same rights as nationals of the State party to file complaints and obtain effective redress before the competent judicial authorities. It also recommends that the State party strengthen its efforts to inform migrant workers of the administrative and judicial remedies available to them and of the fact that legal advice is available to migrant workers in the State party. The Committee recommends that the State party ensure that migrant workers' complaints are dealt with in an effective manner.

3. Human rights of all migrant workers and members of their families (arts. 8–35)

23. While commending the State party's efforts to regulate the rights of domestic workers and permit labour inspections in private homes, the Committee is concerned at cases in which migrant workers, notably women in the domestic sector, are subjected to abusive employment conditions. The Committee is concerned that women migrant domestic workers, most notably those in an irregular situation, are at risk of exploitation. It

also notes that they have limited access to information on the legal remedies available to them.

24. **The Committee recommends that the State party:**

(a) **Keep up its practice of workplace inspections in the domestic labour sector in order to ensure that migrant workers enjoy the same working conditions as its own nationals;**

(b) **Step up its awareness-raising campaigns on migrant workers' human rights, for employers, employees and the general public, and continue training its officials, particularly those responsible for workplace inspections; and**

(c) **Ensure that migrant workers who are victims of rights violations have effective access to means of bringing complaints against their employers, including in the domestic labour sector, and that all violations are investigated and, where appropriate, punished. The Committee encourages the State party to take account of its general comment No. 1 (2010) on migrant domestic workers.**

25. The Committee welcomes the State party's undertaking to solve the prison overcrowding problem, made during the universal periodic review. The Committee is concerned at reports of difficulties faced by migrants who are in detention for criminal offences, including persistent overcrowding in the protected areas where foreigners are placed in some prisons, language barriers and problems posed by the absence of the family, social networks and assistance from consulates, in particular where their countries of origin have no consular representation in the State party. It acknowledges the competence of the Parliamentary Commissioner for the Prison System, established by law in 2003, to visit detained migrant workers and make recommendations to uphold their rights.

26. **The Committee recommends that the State party continue its efforts to improve prison conditions, taking particular account of the situation of migrant workers, ensure that this group does not suffer overcrowding, and guarantee that migrant workers deprived of their liberty are informed of their rights to appropriate legal and consular assistance.**

27. The Committee welcomes the work of the Directorate-General for Consular Affairs and Liaison and takes note of the bill on consular organization, which aims to streamline administrative procedures and make use of new technology to expand consular services to uphold the human rights of Uruguayan migrant workers abroad. The Committee welcomes the conclusion of agreements with government departments to send civil registry documents to the State party's consulates abroad and the pilot project to issue identity cards in Argentina, soon to be extended to other countries in the region. The Committee is nevertheless concerned at the fact that identity cards can only be applied for and obtained in the State party.

28. **The Committee encourages the State party to speed up the enactment and implementation of the bill on consular organization. It also encourages the State party in its efforts to ensure that consular services are adequate to meet the need for protection and promotion of the human rights of Uruguayan migrant workers abroad. The Committee encourages the State party to step up its efforts to make identity cards available to its nationals and supports its current efforts to have them processed in Argentina and the region.**

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36–56)

29. The Committee notes with interest the initiatives to allow Uruguayan migrant workers abroad to vote, as provided for in article 41 of the Convention and in the

Uruguayan Constitution. The Committee is concerned at the lack of regulations in this regard, and that Uruguayan migrant workers and members of their families abroad are not able to exercise this right.

30. **The Committee recommends that the State party take the necessary steps, including legislative measures, to guarantee Uruguayan migrant workers abroad the enjoyment of the right to vote, and to encourage civic participation and liaison with its nationals abroad.**

31. The Committee is concerned that the non-contributory old-age and invalidity pension scheme still requires migrant workers to have been continuously resident in the State party for 15 years in order to qualify.

32. **The Committee recommends that the State party consider taking steps such as changing the current continuous residence requirements, in order to guarantee in its territory access to social security benefits for all migrant workers and members of their families, on an equal footing with its own nationals.**

33. The Committee notes the agreement with the Banco Hipotecario del Uruguay and the postal service to facilitate the transfer of earnings and savings by Uruguayan migrant workers in Spain, but regrets the lack of information on steps taken by the State party to facilitate the transfer of earnings and savings by foreign migrant workers in its own territory.

34. **The Committee encourages the State party to take the necessary steps to ensure that migrant workers can transfer their earnings and savings from Uruguay to their States of origin or other States of their choice.**

5. **Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64–71)**

35. The Committee welcomes the establishment and strengthening of the National Migration Board to advise and coordinate with the executive on migration issues. The Committee also notes that the State party is devising a public policy on migration.

36. **The Committee encourages the State party in its preparation of a comprehensive public policy on migration in line with international standards of protection for the human rights of migrant workers and their families and with the Convention. It urges the State party to ensure that the National Migration Board has sufficient resources to achieve its aims and to consult with relevant institutions and organizations, including bodies not represented on the Board. The Committee also encourages the State party to ensure that migrant workers themselves or their representative bodies are involved in the formulation and implementation of all its policies on migrant workers' rights.**

37. The Committee is concerned at reports that migrant workers encounter difficulties in validating foreign qualifications and getting their skills recognized.

38. **The Committee recommends that the State party take the necessary steps, including providing facilities for exchanges of information with the relevant ministries, to facilitate validation of qualifications and recognition of skills.**

39. The Committee notes the work of the Consultative Advisory Council on Migration, which is made up of civil society organizations and trade union representatives working in the area of migration. The Committee also notes the recent decision to hold monthly meetings in view of the fact that standing regular consultations between the National Migration Board and the Council were not institutionalized. The Committee is concerned

that no financial support is given to civil society organizations for their important contribution, in the form of direct support and advice.

40. **The Committee encourages the State party to institutionalize regular meetings with the Consultative Advisory Council on Migration and to facilitate cooperation in the design and implementation of initiatives to help migrant workers and their families. The Committee highlights the important contribution made by civil society organizations in terms of care and support for migrant workers, in particular those in an irregular situation, and encourages the State party to continue to cooperate even more closely with those organizations.**

41. The Committee notes the numerous directorates, programmes and units within the Ministry of Social Development that deal with migrant workers yet are not properly coordinated, and welcomes the creation of the Migrants Unit.

42. **The Committee encourages the State party to reinforce the Migrants Unit as a coordinating function in the Ministry of Social Development, so as to effectively ensure the promotion and protection of migrant workers' rights.**

43. While noting the State party's efforts to support returning Uruguayan migrant workers through the Return and Welcome Office, the Committee is concerned at the lack of any information on returning migrant workers who do not go through that Office. It is also concerned at the fact that migrant workers still have difficulty accessing information and services intended to help with economic, social and cultural reintegration, despite the existence of agreements with the institutions concerned.

44. **The Committee recommends that the State party encourage the involvement of migrant workers and members of their families in developing programmes to help returning migrants with long-term reintegration into the economic, social and cultural fabric of the State party. It encourages it to publicize more widely the services available to returning migrant workers.**

45. While it welcomes the State party's efforts to combat and penalize the crime of trafficking in persons by giving specific definitions of such offences in Act No. 18250 on Migration and elsewhere, the Committee is concerned at the lack of comprehensive legislation to protect the victims of human trafficking in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol). The Committee is also concerned at:

(a) The lack of an up-to-date analysis of the extent and nature of the problem or of any national plan to combat trafficking;

(b) The continuing occurrence of cases of trafficking in persons for purposes of sexual or labour exploitation, both women and men;

(c) The low number of trials and convictions for trafficking in persons; and

(d) The lack of special shelters to support victims of trafficking, or of information on what special protection and assistance is available to victims.

46. **The Committee recommends that the State party step up its efforts to combat trafficking in persons and encourages it to adopt without delay a comprehensive law on human trafficking and regulations to ensure its application, in accordance with the Palermo Protocol. In particular, the Committee recommends that the State party:**

(a) **Pursue its work across agencies to produce a comprehensive strategy on the prevention of trafficking and the prosecution and punishment of those responsible,**

and on the protection, rehabilitation, reintegration and social support of victims of human trafficking;

(b) Put in place effective mechanisms to identify traffickers and victims of trafficking and, where necessary, arrange international protection for the victims;

(c) Set up enough special shelters to cater for trafficking victims;

(d) Pursue its training programmes for officials, and particularly law enforcement officials, prison officers, prosecutors, labour inspectors, teachers, health workers, and diplomats and officials in Uruguayan embassies and consulates abroad, in order to enhance their ability to identify victims and their understanding of the problem of trafficking;

(e) Step up international, regional and bilateral cooperation and information exchanges with countries of origin, transit and destination, in order to prevent human trafficking.

47. The Committee notes with interest the request for an advisory opinion jointly submitted to the Inter-American Court of Human Rights by Argentina, Brazil, Paraguay and Uruguay in relation to the migratory status of unaccompanied minors, and welcomes the tailor-made assistance provided to such children by the State party. While noting that the problem is not widespread in the State party, the Committee regrets the lack of specific data and measures to adequately identify unaccompanied migrant children, who run the risk of falling victim to abuse and violations along migration routes.

48. **The Committee encourages the State party to pursue efforts to guarantee clear procedures for the identification and protection of unaccompanied minors based on the best interests of the child and their individual situation. The Committee recommends that the State party consider establishing a protocol for dealing with children at the border.**

49. The Committee welcomes the regularization programmes in the State party for migrant workers from MERCOSUR and Associate Members, migrant workers from non-MERCOSUR countries who are under a contract of employment, and on humanitarian grounds. It also commends the various initiatives for the regularization of the status of migrant workers in an irregular situation, such as the Rapid Response Plan and the Identity Programme. Nevertheless, the Committee is concerned at:

(a) The lack of sufficient statistical data on irregular migration;

(b) The assessment by the State party that, although migrant workers in an irregular situation can access employment programmes with provisional identity cards, little use has so far been made of that resource;

(c) The lack of clarity about how many people have sought to avail themselves of those initiatives, how many have done so, and the current situation of migrants whose applications for regularization were turned down;

(d) The alleged difficulties in obtaining documents, including limited access to information on procedures, their cost, requirements and conditions;

(e) The situation of 24 long-standing undocumented immigrants who do not possess the documents required by their country of origin. Although, following legal proceedings, they will receive a temporary certificate for foreigners, the document is not enough to enable them to access a Uruguayan identity card and, by extension, their other rights.

50. **The Committee recommends that the State party collect data on migrant workers in an irregular situation and their families, and ensure that they have**

effective access to information on procedures in place for regularizing their situation. The Committee encourages the State party to continue to facilitate regularization procedures, primarily by strengthening the collection of empirical information on the results of available migration status regularization procedures. It also encourages the State party to consider a special regime allowing the 24 immigrants who will receive a temporary certificate to obtain a provisional identity card and exercise their rights on an equal footing with residents in the State party.

6. Follow-up and dissemination

Follow-up

51. The Committee requests the State party to provide detailed information in its second periodic report on the steps that it has taken to act on the recommendations set forth in these concluding observations. The Committee recommends that the State party take all appropriate measures to implement these recommendations by, *inter alia*, transmitting them for consideration and appropriate action to Parliament and local authorities.

Dissemination

52. The Committee likewise requests the State party to disseminate these concluding observations, particularly to public agencies, the judiciary, non-governmental organizations and other members of civil society, as well as to universities and the general public, and to take the necessary steps to make them known to Uruguayan migrant workers abroad and to foreign migrant workers in transit or residing in Uruguay.

7. Next periodic report

53. The Committee requests the State party to submit its second periodic report by 1 May 2019 at the latest. Alternatively, the State party could avail itself of the simplified reporting procedure whereby the Committee draws up a list of issues to which the State party responds. The State party's replies to the list of issues will then constitute its report under article 73 of the Convention, and the State party will not need to submit a traditional periodic report. This new optional reporting procedure was adopted by the Committee at its fourteenth session, in April 2011 (see A/66/48, para. 26).

54. The Committee requests the State party to ensure the wide participation of all ministries and public bodies in the preparation of its next periodic report (or list of issues, in the case of the simplified reporting procedure) and, at the same time, to consult migrant workers' and human rights organizations.

55. The Committee invites the State party to follow the harmonized guidelines for the drafting of human rights treaty body reports (HRI/GEN/2/Rev.6, chap. I). The Committee invites the State party to submit its updated common core document, which should not exceed 80 pages, and its treaty-specific document, which should not exceed 40 pages.